

No 286. matter civil and profane, by the injunctions given to the Commissaries, they could not be judges in such cases, in things above L. 40. *Replied*, That she was convened for three terms mails, at L. 40 the piece, so that it behoved to be thought *tot sententiæ, quot capita in libello*. In respect of which reply, the allegiance was repelled.

*Spottiswood*, (COMMISSARIOT.) p. 38.

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1629. *January 29.* HORSEBURGH *against* M'LEVAIN.

No 287. IN an action of tutor-counts, pursued before the Commissaries of Glasgow, the LORDS found, that the Commissaries were competent judges thereto, and refused to advocate the same to the Lords, upon that reason, that the Commissaries were not judges to such actions. See No 291. p. 7578.

*Fol. Dic. v. 1. p. 506. Durie, p. 420.*

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1630. *January 15.* ALDCORN *against* KER.

No 288. A DECRET before the Commissary of Peebles, for the sum of L. 60, being quarrelled by suspension as null, because albeit it proceeded upon the defenders being holden as confest, yet the inferior Commissaries were not judges in matters referred to oaths above the sum of L. 40, and the Commissaries of Edinburgh in matters exceeding 100 merks, conform to their injunctions; notwithstanding whereof the decret was sustained.

*Fol. Dic. v. 1. p. 505. Durie, p. 481.*

\* \* \* Spottiswood reports this case :

1630. *January 16.*—TURNBULL having obtained a decret against Ker, for payment of L. 60, before the Commissary of Peebles; this decret was suspended, because the Commissary could not be judge in a civil matter above L. 40. Yet the LORDS sustained the decret.

*Spottiswood*, (COMMISSARIOT.) p. 39.

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A decree of  
a Commis-  
sary was  
sustained, in  
which a mat-  
ter was refer-  
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1634. *June 18.* RICHARDSON *against* MAXWELL.

AGNES RICHARDSON having obtained decret against Maxwell of Frier-corse, before the Commissary of Dumfries, decerning him to relieve the said Agnes Richardson of the sum of L. 80, which she had paid as cautioner for Maxwell's son, of the which cautionry and sum he had promised to relieve her; and also

decerning him to pay to her the sum of L. 40 for meat and drink, furnished by her to the defender's self; and the verity of both which articles was referred to the defender's oath, and *in pœnam contumaciæ et in supplementum*, the pursuer's oath was taken upon the libel, whereupon sentence was pronounced; which being suspended, because it was given *a non suo iudice*, the matter being civil, and albeit referred to oath, whereby the Commissary might appear to be competent judge, yet seeing the subject exceeded L. 40, and so is above the injunctions given to Commissaries, whereby they have only power in civil matters, where the same are referred to the parties oath, if the sum exceeded not L. 40, and above that sum they cannot proceed, albeit referred to oath;—the LORDS found not this reason relevant to suspend the decret, but sustained the same, though it was in a matter of L. 80; for ordinarily the LORDS found, that the ecclesiastical judge may proceed in civil matters referred to oath, extending to 100 merks, and this being but for 20 merks more, the same was not thought of such importance as to annul the sentence; for as, concerning the other article of L. 40, albeit it was in the same libel and sentence, yet it was considered as if it had been pursued in a distinct libel, and as a several sentence, seeing it was for another subject and cause of a different nature from the other, the one being for relief, and the other for furnishing of vivers to himself; neither was the offer of the suspender to give his oath received now *post sententiam*, there being no cause alleged to excuse his absence and not compearance at the day whereto he was cited; and that the pursuer's oath was also taken upon the truth of the libel, whereby there might be fear of perjury if the other party's oath should now be taken, if he should deny the libel.

Act. *Cunningham.*

Alt. ———.

Clerk, *Gibson.**Fol. Dic. v. I. p. 506. Durie, p. 718.*1669. February 5. JAMES DEANES *against* ALEXANDER BOTHWEL.

ALEXANDER BOTHWEL of Glencorse, being convened before the Commissaries of Edinburgh, for slandering James Deanes, procurator before the Commissaries, in calling him a false knave, publicly in the Parliament House, and at the Cross; the same being proven by witnesses, he was decerned to stand at the kirk door of Glencorse, where both parties dwelt, and acknowledge his fault, and to pay L. 100 to the poor, and L. 100 to the party. Bothwel suspends on these reasons; 1<sup>st</sup> That the Commissaries could not ordain him to stand at a congregation, which is an ecclesiastical censure; 2<sup>dly</sup>, That they could not also fine him to the poor, nor decern any thing to the party, but the expences of plea, seeing there was no other damage libelled nor proven; 3<sup>dly</sup>, That the witnesses were not habile, being the pursuer's own servants. The charger opposed the decret, wherein the suspender was compearance, and objected nothing

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defender's oath, and he held as confessed for not appearing, though the debt exceeded 100 merks.

A decree of a Commissary for two sums, each of which was under 100 merks, but when added together exceeded that sum, was sustained.

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The Commissaries having fined a defender in a process of slander in L. 200 Scots, the Lords sustained the decret.